

Invitation to Comment

Title	CEQA Actions: Form and Format of Administrative Record (adopt Cal. Rules of Court, rule 3.1365)
Summary	<p>No statute or statewide rules exist concerning the format or organization of the administrative record required in actions brought under the California Environmental Quality Act (CEQA). Such records, which are the sole factual basis for the court’s review in CEQA cases at both the trial and appellate levels, are frequently voluminous and can be physically and organizationally challenging for a court to handle. The proposed rule would provide a standardized format for the CEQA records in order to facilitate the preparation of the record and the court’s review.</p>
Source	<p>Civil and Small Claims Advisory Committee Hon. Lee Smalley Edmon, Chair</p>
Staff	<p>Anne M. Ronan, Uniform Rules Subcommittee Counsel 415-865-8933, anne.ronan@jud.ca.gov</p>
Discussion	<p>Actions brought under the California Environmental Quality Act (CEQA) seek judicial review of a public agency’s approval of an Environmental Impact Report (EIR) or determination that a project does not require either an EIR or any other environmental review. The challenge normally takes the form of either an administrative mandamus action under Code of Civil Procedure section 1094.5 or a traditional mandamus action under Code of Civil Procedure section 1085. Under either statute, the trial court must review an administrative record of the proceedings of the public agency relating to its review and ultimate approval of a given project, which is lodged with the court. Because the statutory requirements for the content of the administrative record are very broad, the record is generally voluminous, ranging from several dozen pages for even the smallest project, to many hundreds of pages for most projects, to tens of thousand of pages for the largest projects.</p> <p>The voluminous nature of the administrative records has led to two sets of problems: (1) difficulty in physically accessing the record and keeping it intact throughout the litigation and (2) difficulty in reviewing the record when it has not been adequately organized and indexed. The proposed rule, California Rules of Court, rule 3.1365, would provide a state-wide standard to facilitate a court’s consideration of the record and to ensure that the record remains physically intact throughout court review.</p>

The proposed rule specifies the size and type of paper that the record should be copied on for filing (excepting those documents presented in original format), and requires that the pages be consecutively numbered and used on one side only to allow easier accessibility. (Rule 3.1365(a).) The rule also requires that the pages be bound on the left side (as required of appellate records) or contained in three-ring binders, and provides for a page limit of no more than 300 pages per bound volume, or 400 pages per three-ring binder. (Rule 3.1365(b).)

The rule further requires that a detailed table of contents be placed at the beginning of the record, setting forth the volume and page at which each document and exhibit thereto begins. (Rule 3.1365(c).) Finally, the rule provides that the record is to be organized in a way that will facilitate the court's review under CEQA. (Rule 3.1365(d).)

Placement of Rule

This rule is to be placed in division 11 (Law and Motion) of title 3 (Civil Rules), as the first rule in a new chapter 8, entitled Petitions Under the California Environmental Quality Act. This placement will make the rule easy to find and allow for the logical inclusion of future rules regarding CEQA petitions, if any should be developed. (If another pending proposal is not approved, the numbers of the chapters proposed here will be adjusted.)

Alternatives

The Advisory Committee also considered the possibility of allowing the parties to agree, with leave of court, to an alternative form and organization of the administrative record, including electronic versions. The committee invites comment on this alternative.

Attachment

Rule 3.1365 of the California Rules of Court would be adopted by the Judicial Council, effective January 1, 2008, to read:

1 **Chapter 8. Petitions Under the California Environmental Quality Act**

2
3 **Rule 3.1365. Form and format of papers lodged as administrative record in a**
4 **CEQA proceeding**

5
6 **(a) Paper and format**

7
8 In the administrative record lodged in a trial court in a proceeding brought under the
9 California Environmental Quality Act:

- 10
11 (1) The paper must be opaque, unglazed, white or unbleached, recycled, 8 1/2 by
12 11 inches, and of standard quality not less than 20-pound weight, except that
13 maps, charts, and other demonstrative materials may be larger;
14
15 (2) The text and other matter must be clear and legible;
16
17 (3) The pages must be consecutively numbered;
18
19 (4) The margin on the left edge of the page must be at least 1 1/4 inches; and
20
21 (5) Only one side of the paper may be used.

22
23 **(b) Binding and cover**

24
25 The administrative record must be bound on the left margin or contained in three-
26 ring binders. Bound volumes must contain no more than 300 pages and binders
27 must contain no more than 400 pages. The cover of each volume must contain the
28 information required in Rule 2.111, be prominently entitled “ADMINISTRATIVE
29 RECORD,” and state the volume number and the page numbers included in the
30 volume.

31
32 **(c) Index**

33
34 A detailed index must be placed at the beginning of the administrative record. The
35 index must list each document in the administrative record, in the order presented,
36 including title, date of the document, brief description, and the volume and page
37 where it begins. If documents include exhibits or appendices, the index must so
38 indicate and must list each document contained in the exhibit or appendix
39 (including environmental impact report appendices) and the volume and page where
40 each document begins. A copy of the index must be filed in the court at the time the
41 administrative record is lodged with the court.

1
2 **(d) Organization**

3
4 **(1) Order of documents**

5
6 The administrative record must be organized with the documents in the
7 following order, as applicable:

8
9 **(A) The Notice of Determination;**

10
11 **(B) The resolutions or ordinances adopted by the lead agency approving the**
12 **project;**

13
14 **(C) The findings required by Public Resources Code section 21081,**
15 **including any statement of overriding considerations;**

16
17 **(D) The final environmental impact report, including the draft environmental**
18 **impact report or a revision of the draft and all other matters included in**
19 **the final environmental impact report;**

20
21 **(E) The initial study;**

22
23 **(F) Staff reports prepared for the bodies providing subordinate approvals or**
24 **recommendations to the lead agency, in chronological order;**

25
26 **(G) Transcripts and minutes of hearings, in chronological order; and**

27
28 **(H) The remainder of the administrative record, in chronological order.**

29
30 **(2) List not limiting**

31
32 The list of documents in (1) is not intended to limit the content of the
33 administrative record, which is prescribed in Public Resources Code
34 section 21167.6(e).

35
36 **(3) Use of tabs**

37
38 Each portion of the administrative record listed above should be separated and
39 identified by tabs.

Item SPR08-11 Response Form

Title: CEQA Actions: Form and Format of Administrative Record (adopt Cal. Rules of Court, rule 3.1365)

- Agree with proposed changes
- Agree with proposed changes **if modified**
- Do not agree with proposed changes

Comments: _____

Name: _____ Title: _____

Organization: _____

- Commenting on behalf of an organization

Address: _____

City, State, Zip: _____

To Submit Comments

Comments may be written on this form, prepared in a letter format, or submitted online. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments.

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Email: invitations@jud.ca.gov

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Fax: (415) 865-7664, Attn: Camilla Kieliger

DEADLINE FOR COMMENT: 5:00 p.m., Friday, June 20, 2008

*Circulation for comment does not imply endorsement by the Judicial Council
or the Rules and Projects Committee.
All comments will become part of the public record of the council's action.*